

Judge Ginsburg's record is exemplary; and I am frank to say that I expected nothing less in a nomination by President Clinton. But there is still more that I want to know.

As an advocate, Ruth Bader Ginsburg pushed the Court to landmark decisions on behalf of women's rights. While she fought for women one case at a time, she had a goal—a vision—of a Constitution that protected women against discrimination.

While a circuit court of appeals judge, her duty has been to faithfully apply the law as interpreted by the Supreme Court. But, if confirmed as the next Supreme Court Justice, she would have the opportunity to shape the law rather than merely apply it. I want to know whether Judge Ginsburg will embrace this opportunity to shape the law to make the enduring principles of our Constitution a reality for all Americans—no matter how rich or poor, no matter what race or religion, no matter how unpopular their cause might be.

As an appeals court judge, Judge Ginsburg is well known for her preference for "measured"—or incremental—movement in the law. She speaks of permitting constitutional doctrine, especially in controversial areas, to emerge from a dialogue between the courts, other branches of government, and the people. I am concerned she will always take a similar approach on the Supreme Court; and I will make it no secret that I hope she will not.

When Judge Ginsburg speaks of a dialogue, she apparently envisions a concept of gradualism in applying the Constitution's provisions. That causes me concern because any delay in enunciating or protecting constitutional rights is justice denied.

There are times and there are issues when the Supreme Court must show leadership. History demonstrates that it is sometimes the Court—rather than Congress or the President—which must have the will and the vision to define the Constitution's promises of liberty and justice, even when it is unpopular to do so. I want to know whether Judge Ginsburg will lead the Court at such times.

Judicial leadership in addressing the great social and political problems of our day can be controversial. Judge Ginsburg will probably hear much about judicial activism and judge-made laws from my colleagues during these hearings. I suspect they will warn her against judicial activism, notwithstanding the considerable conservative judicial activism we have seen from the current Supreme Court.

But, we must rise above this worn-out debate to recognize that leadership in applying the cherished principles of our Constitution is not judicial activism. It is leadership we need from Judge Ginsburg on the Supreme Court.

The role of the Supreme Court in preserving and promoting individual liberty, equal opportunity, and social justice must be restored. Judge Ginsburg, your career as an advocate suggests that you have the intelligence, determination, and courage to begin the work that needs to be done. Your career as an appeals court judge suggests that you have the temperament and judicial skills to begin that restoration. My only question for you during these hearings is whether you will meet that challenge.

The CHAIRMAN. Thank you very much.
Senator Simpson.

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Mr. Chairman, in the past, following Howard has always gotten me pretty well primed up, but not this time, except for a few rambling remarks there about Republican Presidents and a Democratic President, too, he is right on track.

I appreciate your leadership, Mr. Chairman. You have always been very fair and open, serious and practical with us.

Welcome back to Arlen, a wonderful legislator and friend and a real contributor to this committee.

Good morning, Judge Ginsburg.

In going through many of the things that you have written, I noted an article in the Illinois Law Review where you said, in carrying out its duty to consider the President's nominees to the Supreme Court, we have a "weighty responsibility to consider what will serve the national interest." We indeed do, and we will attempt to carry that out responsibly and with a serious intent of a knowledge of our responsibility by considering, among other things, your

judicial philosophy, how you will think and reason, as you contemplate the pressing legal issues of the day, questions of the day, and we must do that without compromising your judicial independence.

There are, of course, other important considerations and qualifications for a nominee to the Supreme Court. A nominee's recitude and deportment are critical considerations. We must be certain that the nominee has the education, the experience, and the temperament to serve in the highest office in our profession.

I am certainly pleased to say here the record is remarkably clear. Indeed, in these areas you may well be overqualified. That is a serious defect in this community. Think of the ones you know who are.

As one who loves Gilbert and Sullivan, you would compose your own lyrics to the tune of "I've got a little list of society offenders who never would be missed," and you remember the rest of that.

But the record here is not so obvious or apparent on your judicial philosophy. So, indeed, as Senator Metzenbaum has said, what about judicial activism? That will be asked. Some of your writings seem to imply that it is justified at times, perhaps even forced upon the courts by congressional inaction. I have seen that problem. It is very real. No wonder courts enter the fray.

When considering constitutional issues, how persuasive do you find the intent of those who drafted the document. You said some things about that. Your colleagues have or your colleagues-to-be have. What will you do when their intent is unclear or, even more appropriately, more unknowable?

In these hearings, we will try to learn what approach you might take in deciding the critical questions of our day, and yet only you will know the extent and substance of response to those questions. Historical perspective here being an example, the more questions, the less answers will get you home.

So for me, your competence and temperament are beyond question and we look forward to learning more about your thinking and reasoning, as you would wish to share it in whatever depth, and we will know then whether this appointment will serve the national interest, a very broad and remarkable phrase, but I think, indeed, from what I know, that your appointment would indeed serve that interest.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

I might note it is remarkable that 7 years ago the hearing we had here was somewhat more controversial, and I made a speech that mentioned the "p" word, philosophy, that we should examine the philosophy, and most editorial writers of the Nation said that was not appropriate. At least we have crossed that hurdle. No one is arguing that any more.

Senator DeConcini.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DeCONCINI. Thank you, Mr. Chairman.

Let me join in the praise of you and the ranking member in conducting these hearings and the members of this committee for pro-